

LFC Requester:	RubyAnn Esquibel
-----------------------	-------------------------

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO

AgencyAnalysis.nmlegis.gov and email to billanalysis@dfa.nm.gov

(Analysis must be uploaded as a PDF)

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: 2/13/25 *Check all that apply:*
Bill Number: HB 378 Original Correction
 Amendment Substitute

Sponsor: Gail Armstrong **Agency Name and Code:** NM Hospital Association
Short Title: MEDICAL MALPRACTICE CHANGES **Number:** _____
Person Writing: Julia Ruetten
Phone: 5053409489 **Email:** jruetten@nmhsc.com

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

The New Mexico Hospital Association supports HB 378, as introduced. The changes made to the Medical Malpractice Act in 2021 resulted in a cascade of unintended consequences, which the legislature has partially addressed, and the changes proposed in this bill will aid in slowing down and reversing the negative impacts to access to care. Currently, limited access to care is the leading healthcare issue facing all New Mexicans, and the medical malpractice environment is a primary driver of the access emergency.

Hospitals across the state have seen doubling and tripling of malpractice plan premiums in the last four years and there is a real risk of smaller hospitals not being able to meet this obligation and facing closure as a result. This bill would begin to bring balance back to the system while continuing to protect patients who have been harmed.

HB 378 makes several changes to the Act (with our response to each bulleted below):

1. Changes the definition of occurrence in the Act to treat one malpractice injury event as one malpractice claim, regardless of the number of health care providers involved or the number of “errors or omissions [that] contributed to the harm.” The existing definition of “occurrence” was added to the Medical Malpractice Act in 2021 when significant changes were made to the Act. (This is the same change as in HB 374.)
 - Without this change, trial attorneys will continue to advise patients pursuing malpractice claims to utilize this single definition to expand the potential awards or settlements, if there is cause found, which has inflated the amount of malpractice settlements and awards. On October 7, 2022, the custodian of the Patient’s Compensation Fund (PCF), then Superintendent of Insurance Russell Toal, issued his Final Order for calendar year 2023 PCF surcharge rates. The Final Order included Exhibit A: “Recommended Changes to the Medical Malpractice Act” to “address the cost phenomena that are negatively impacting the PCF.” His first recommendation was “that “malpractice claim” and “occurrence” be synonymously defined in such a way that a single, individual event be treated as a single malpractice claim or occurrence, regardless of the number of contributing providers or acts.” (See <https://pcf.osi.state.nm.us/wp-content/uploads/2022/10/FINAL-ORDER-FROM-SUPT.pdf>)
2. Caps at \$600,000 the amount recoverable for an occurrence of malpractice.
 - This change returns the cap to the level prior to the changes in 2021.
3. Caps at \$200,000 (from \$250,000) a health care provider’s personal liability for “damages and medical care and related benefits.”
 - This change returns the cap to the level prior to the changes in 2021.
4. Specifies that amounts above \$200,000 shall be paid from the PCF.
 - This change returns the cap to the level prior to the changes in 2021.
5. Requires that payments made from the PCF for medical care and related benefits must be

made as expenses are incurred rather than in a lump sum (this change is also in SB 176).

- This addresses the importance of the PCF, which covers the cost of care for harmed patients as long as needed but is not being utilized as intended to ensure that patients' ongoing medical care is financially covered. This is due to settlements and judgements that lump-sum past and future medical expenses together, which increases percentage payouts to attorneys (paid for by the PCF) but has the real potential to further harm patients by leaving them on the hook for future care that they cannot afford when the lump sum payment runs out. Requiring that payments from the PCF be made as expenses are incurred will protect patients for the long term because all needed medical care will be paid by the PCF.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

SIGNIFICANT ISSUES

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS